

# **Creative Industries Workshop – Key IPR Issues**

**Dr Rosanna Cooper, Managing Partner, RT Coopers**

Telfords Yard, 6/8 The Highway

London, E1W 2BS

Tel: +44 207 488 2985

Fax: +44 207 488 2102

Email: [enquiries@rtcoopers.com](mailto:enquiries@rtcoopers.com)

Website: [www.rtcoopers.com](http://www.rtcoopers.com) or [www.rtcoopersiplaw.com](http://www.rtcoopersiplaw.com)

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# Introduction

- Who We Are
- Overview of Intellectual Property
- Protection of Creative Arts
- Commercialisation of IPRs
- Our experience in Creative Arts Industry
- Conclusion

# Who We Are

# Who We Are

## ■ Full Service Law Firm in the City of London

## ■ Specialist areas:

- Media and Entertainment Law
- Intellectual Property
- Corporate Law
- Commercial Law

## ■ Our Clients Include:

- Record Labels
- Publishers
- Production companies (TV, Film and Music)
- Authors, Musicians, Photographers and Designers
- Directors and Producers
- Web Developers
- WAP, Pod-casting and Phone-casting (Mobile Content) companies
- Agents



# Who We Are

- Rapidly expanding in the UK
- Expanding into other jurisdictions
- Work with a number of organisations in the Media and Entertainment Industry
- Network of investors
- Our connections are perfectly suited for those in the Creative Arts

# Overview of Intellectual Property

# Overview of IPRs

- Intangible commercially valuable assets
- Getting the best value for your IPRs
- ‘Registered’ and ‘Unregistered’ rights
- IP protects an ‘expression of an idea’ - not the actual idea
- Must be ‘recorded in tangible form’
- Various IPRs in one piece of work
- Territorial Protection

# Overview of IPRs

## REGISTERED RIGHTS

- ♦ **Patents** = inventions, processes & products
- ♦ **Trade marks** = badge of business, logos, names, smells, sound
- ♦ **Registered designs** = **functional designs** including whole or parts of products e.g. graphic symbols or packaging + **features** of lines, contour, shape, materials or textures of the product itself or its ornamentation e.g. logos, packaging

[www.patent.gov.uk](http://www.patent.gov.uk)

## UNREGISTERED RIGHTS

- ♦ **Know-how** = trade secrets
- ♦ **Copyright** = literary works, including digital works, music, software, artistic works, logos, dance, mimes
- ♦ **Sound recordings** = sound
- ♦ **Design rights** = shape and configuration of a product
- ♦ **Database rights** = databases
- ♦ **Brands** - goodwill and reputation

# IPR: COPYRIGHT

- What is copyright?
- Ownership
- Duration
- Test for Originality
- Copyright Infringement
- Copyright, Designs and Patents Act 1988 (CDPA) as amended

[http://www.opsi.gov.uk/acts/acts1988/Ukpga\\_19880048\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm)

# What is Copyright?

▪ **Bundles of rights** - to reproduce, rent, broadcast or to stop parties exploiting work

**Includes:-**

- **Original Literary works-** books, articles, drawings, digital works, computer programs
- **Original Musical works** – music
- **Original Dramatic works-** dance, mime
- **Original Artistic works** – sculpture, photographs, logos
- **Sound recordings** – sound, moving pictures
- **Computer generated** – computer program
- **No system of registration in UK-** protected as soon as created and recorded

# What is Copyright?

## Copyright and Regulated Rights Regulations 2003

- **New Copyright** - Copyright works communicated to the public by electronic transmission or broadcasting
- A copyright owner can stop a substantial part of his work being communicated to the public by electronic transmission, distribution or broadcast without a licence or consent. This includes digital copying and contents of books, articles or graphics made available on websites.

# What is Copyright?

## Fixation

- **Recorded in Writing** - for copyright to subsist in literary, dramatic or musical works they have to be recorded in writing
- **Writing** - “Any form of notation or code, whether by hand or otherwise and regardless of the method by which or medium in or on which it is recorded ...”
- E.g storing in a ROM, disk, other computer memory or machine readable medium
- **Conventions** – reciprocal protection of works in convention countries
- **Berne Convention** – no formalities required
- **Universal Copyright Convention** – copyright notice  
© [Name of Copyright Proprietor] [Year of Creation]

# Ownership of Copyright

- **Not a monopoly right**

- **Authorship and Ownership** *Cyprotex Discovery v University of Sheffield [2003]*

- **Author** - first owner of any copyright subsisting in a work

- **Author** - creator of the work is generally the author

- **Author** - individual, company or other incorporated body

- **Employer First Owner of copyright** - for literary or artistic works created by an employee in the course of employment

- **Computer Generated Works** – author is the person by whom the arrangements necessary for the making of the computer generated work (films and sound recordings)

- **Joint author** – work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from the other authors

# Originality

## Originality

- **Test** – degree of skill and labour and judgement expended by the author or creator

# Duration

- **Copyright**– life of the author plus 70 years
- **Printed Format of Publications** - 25 years from the end of first year of publication – e.g Magazine centre-spread layout
- **Sound recordings**– 50 years from the end of first year of publication

# Copyright Infringement

## ▪ **Copyright Infringement** – under the CDPA

- right to stop a third party exploiting copyright work without permission – copying, issuing copies of the work to the public
- Not infringement of earlier work – Identical work created independently

# IPR: COMPUTER PROGRAMS

- **Copyright Infringement of Computer program-reproduction in any form (require authorisation)**
  - right to stop a third party exploiting copyright work without permission – copying, issuing copies of the work to the public
  - Temporary or permanent reproduction by any means and in any form – loading, displaying, transmission or storage
  - Translation, adaptations or alteration
  - Distribution – in any form including rental

# IPR: COMPUTER PROGRAMS

## Copyright Infringement - Computer program

### ▪ Exceptions

- if no contract no permission required to use the program for its intended use
- to make a back up copy (security)
- for observation and study
- decompilation – conditions attached

# Protection of Creative Arts

# Why is IP relevant to Creative Arts?

- Must be able to protect works
- To stop infringement
- To realise commercial value i.e. commercialisation
- Brand recognition and maintenance
- Copyright in designs are protected - designs used for artistic purposes
- Costs of IP protection

# Case Study

M has written a script. He sent the entire script to W (a production company) for W to review. They agree to make a film. Film is made and shown in the cinema. Ready to distribute world-wide? What are the issues?

- Consider copyright issues
  - Ownership of copyright?
    - Footage?
    - Music?
    - Sound recordings
- Performance Rights?
- Mechanical Rights – live recordings?
- Any trade mark issues?
- Distribution of rights?
- Clearance of Rights?
- Payment to M (see Commercialisation)

# Music Copyright

- **Mechanical Copyright Protection Society**

(MCPS) - <http://www.mcps.co.uk/>

Collection and distribution of royalties – musical works professionally recorded

- **Performing Rights Society**

(PRS) <http://www.prs.co.uk>

Established for composers, producers and authors of all music styles. Collects royalties and provides licences for broadcasting and cable performance

- **Performing Arts Data Service**

<http://www.pads.ahds.ac.uk>

Serves the theatre, film and TV industries and collects, documents, preserves and promotes the use of digital resources in theatre, dance, music, film and the broadcast arts

- **MCPS-PRS Alliance**

# Commercialisation of IPRs

# What can be done with IPR's?

- IPR's can be handled as any other asset:
  - Sell (or Assignment)
  - Purchase
  - Mortgage
  - Licence
- It is important to handle your IPR's correctly because they ensure that your work earns you money!

# What is Meant by Licensing?

- Authorising a third party to license your Media Rights/Product:
  - Market
  - Sell
  - Distribute
- Quality provisions in Licence – e.g how product to be reproduced in a design
- Find Licensor/distributor or agent in the UK
- Royalties
  - Negotiate levels of royalties
  - No fixed royalties

# What Can you License?

- In return for royalties - third party to license your product, IPR's (trade mark, copyright, design, patent, know how):
  - Licence Agreement – include all terms and conditions of licence
  
- Assignment – sale or outright transfer of your intellectual property rights in return for a fee
  - Valuation of IPRs
  - Agreement

# Legal Issues

- Confidentiality Agreements
- Head of Agreements – non binding
- Exclusive or non-Exclusive Agreements
- Registration of IPR's
- Scope of the Licence
  - Terms
  - Termination
  - Warranties
  - Indemnity
  - Limitation of Liability
  - Infringement of IPR's
  - Improvements
  - Competition Law
  - Taxation
  - Territory
  - Jurisdiction

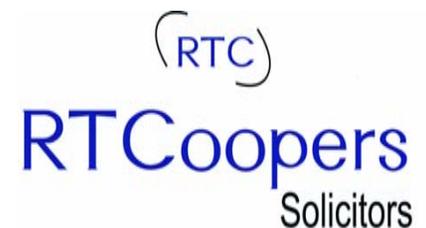
# Commercial Issues

- Who is going to be appointed
- Finding a lawyer
- Royalty payment –distribution or licensing agreement
- Distributor
  - Payment Structure
    - Quarterly payments
    - Statements
    - Audits
  - Quality controls
  - Performance Criteria
- Agent
  - Performance Criteria

# Risk Management

- Ownership of IPR's
- Packaging – register as design, trade mark
- Names and logos – register as trade marks
- Patents – Obtain patents before going into territory
- Use Symbols - ®, ™, ©
- Websites – Terms and Conditions drafted; notices;  
Assignment of IPR from designer to your business
- Insurance
- Insurance of IPRs

# Our experience in this industry?



# What experience do we have?

- Leading experts in IP
- Dedicated IP department which deals with all aspects of IP
- Handle many cases involving copyright infringement in the Media and Entertainment industry
- We have specialist knowledge in:
  - Preparing agreements to License or Assign IPR's
  - Advising on how to exploit IPR's for commercial gains
  - Advising on how to prevent infringement of your IPR's
  - Advising on how to avoid infringing IPRs

# Film Production

- Extensive experience in advising and assisting on feature film production
- The following should be considered:
  - Cast and crew agreements
  - Who owns the IPR's in a particular 'constituent part' of the film?
  - Is the title protected by trade mark?
  - Are all the IPR's in the film cleared before its release?
  - What are the terms of the licence or assignment of the final cut?
  - Potential problems with international release
- It is very important to obtain professional legal advice in the above areas – it is easy to make a mistake!
- Problems with IPR's = Problems with the film!

# Music Production

- Music videos production incorporate IPR's for both film and music
- Licences and assignments of IPR's are often complicated
- Clearance of IPRs

# Music Video Production

- Expert advice by RT Coopers in the following:
  - Drafting Agreements
    - recording contracts
    - remix agreements
    - publishing agreements
    - producer agreements
    - actors agreement
    - crew releases
    - extras releases
    - location agreement
  - Dealing with clearance of IPRs
  - Organising your receipt of royalties

# Mobile Phones

- Creative Arts - Wallpapers, ringtones and video clips etc
- IPR's in mobile content have created a new area of law – few firms specialise in this area
- The IPR's in mobile content are as important as any other IPR – millions of people use phones everyday!
- The following should be considered:
  - Have all the requisite licences or assignments been obtained prior to releasing the content on mobile networks?
  - Do any agreements entered into cover your IPR's effectively?
  - Does the use of a particular wallpaper/ringtones/video clip infringe the IPR's belonging to someone else?
  - How can you protect yourself and your content?

# Conclusion

# Conclusion

- IPR's are a **very serious** consideration for those in the Media and Entertainment Industry
- Ensure you know what the consequences of your actions are!
- Protect your IPR's as you would any other business asset – don't let yourself be caught out!
- Professional advice is crucial to staying on top of things

# Further Information:

## RT Coopers Solicitors

Telfords Yard, 6/8 The Highway  
London, E1W 2BS

Tel: +44 207 488 2985

Fax: +44 207 488 2102

Email: [enquiries@rtcoopers.com](mailto:enquiries@rtcoopers.com)

Website: [www.rtcoopers.com](http://www.rtcoopers.com) or [www.rtcoopersiplaw.com](http://www.rtcoopersiplaw.com)

# THANK YOU